

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

HEARING DATE: April 28, 2016
HEARING TIME: 1:00 pm

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| In re: | : | Case No. 14-70004-cec |
| | : | Case No. 14-41669-cec |
| RAMON NINA, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
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| In re: | : | |
| | : | Case No. 14-70005-cec |
| LORI CANNAN, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
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| In re: | : | |
| | : | Case No. 14-70027-cec |
| WALTER L. TURNER, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-70028-cec |
| JEFFREY B. ALEXANDER, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-40074-cec |
| DIANE E. WILLIAMS, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-40076-cec |
| INEZ R. TURRIETTA, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-40147-cec |
| TAMARA D. JACKSON-BALL, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
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| In re: | : |
| | : Case No. 14-40184-cec |
| SORIE DUMBUYA, | : |
| | : (Chapter 13) |
| Debtor. | : |
| ----- | X |
| In re: | : |
| | : Case No. 14-40284-cec |
| NEKISHA E. ADEKOYA, | : |
| | : (Chapter 13) |
| Debtor. | : |
| ----- | X |
| In re: | : |
| | : Case No. 14-40516-cec |
| ADRIAN D. BLACKWELL, | : |
| | : (Chapter 13) |
| Debtor. | : |
| ----- | X |
| In re: | : |
| | : Case No. 14-40567-cec |
| ROBERT Q. WHITE, | : |
| | : (Chapter 13) |
| Debtor. | : |
| ----- | X |
| In re: | : |
| | : Case No. 14-41071-cec |
| BOBBY D. BLEVINS, | : |
| | : (Chapter 13) |
| Debtor. | : |
| ----- | X |
| In re: | : |
| | : Case No. 14-41073-cec |
| DEBORAH SMITH | : |
| | : (Chapter 13) |
| Debtor. | : |
| ----- | X |
| In re: | : |
| | : Case No. 14-41116-cec |
| JOSE G. HIGUERA, | : |
| | : (Chapter 13) |
| Debtor. | : |
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| In re: | : | |
| | : | Case No. 14-41117-cec |
| MARCUS W. MULLINGS, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41118-cec |
| SHERMAINE DONADELLE-MOORE, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41214-cec |
| DAVID T. ZULLO, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41215-cec |
| CECILIA U. OQUENDO, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41292-cec |
| GLENN NORMAN ROSS, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41446-cec |
| ARETHA C. JOHNSON, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41447-cec |
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| GIL LAMAAR COLEY, | : | (Chapter 13) |
| | : | |
| Debtor. | : | |
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| In re: | : | |
| | : | Case No. 14-41448-cec |
| REGINA B. WESTBROOK, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41584-cec |
| DEBORAH J. LOFFER, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41585-cec |
| NATASHA CORREA, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41671-cec |
| DWAYNE C. SMITH, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41749-cec |
| ALLAN JAMES, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-40703-cec |
| BOBBY BAILEY, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| In re: | : | |
| | : | Case No. 14-41747-cec |
| PARAMESVARM APPUTHURAI, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
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| In re: | : | |
| | : | Case No. 14-41699-cec |
| LILIA RAMIREZ, | : | |
| | : | (Chapter 13) |
| Debtor. | : | |
| ----- | X | |
| WILLIAM K. HARRINGTON, UNITED | : | Adv. Pro. Nos. 15-08230-cec |
| STATES TRUSTEE, REGION 2, | : | 15-08231-cec |
| | : | 15-08233-cec |
| Plaintiff, | : | 15-08234-cec |
| | : | 15-01100-cec |
| vs. | : | 15-01101-cec |
| | : | 15-01102-cec |
| MVP HOME SOLUTIONS, LLC, a New | : | 15-01103-cec |
| Jersey limited liability company; | : | 15-01104-cec |
| SILVERSTEIN & WOLF CORP., a New | : | 15-01106-cec |
| York corporation; BOLDEN PINNACLE | : | 15-01107-cec |
| GROUP CORP., a New York corporation; | : | 15-01108-cec |
| FREE CALM & GROWING, a New York | : | 15-01109-cec |
| sole proprietorship; MARCUS A. | : | 15-01110-cec |
| MULLINGS, individually, and as founder and | : | 15-01111-cec |
| sole member of MVP Home Solutions, LLC; | : | 15-01112-cec |
| AMAL M. BALMACOON, a/k/a MARTIN | : | 15-01113-cec |
| BALMACOON, individually, as chief | : | 15-01114-cec |
| executive officer and sole shareholder of | : | 15-01115-cec |
| Silverstein & Wolf Corp., and as sole | : | 15-01116-cec |
| shareholder and owner of Bolden Pinnacle | : | 15-01117-cec |
| Group Corp.; JOHN NELSON, individually, | : | 15-01118-cec |
| and as an agent for Silverstein & Wolf Corp.; | : | 15-01119-cec |
| DESSALINES SEALY, individually, as sole | : | 15-01120-cec |
| proprietor of Free, Calm & Growing, and as | : | 15-01121-cec |
| agent for Bolden Pinnacle Group Corp., | : | 15-01122-cec |
| | : | 15-01123-cec |
| Defendants. | : | 15-01124-cec |
| ----- | X | 15-01125-cec |

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed Statement of Undisputed Material Facts, Memorandum of Law, Declaration and Exhibits, the United States Trustee's Motion for Summary Judgment on his Complaint against Defendants MVP Home Solutions LLC, Silverstein & Wolf Corp., Marcus A. Mullings, Amal Balmacoon, and John Nelson (the "Motion") will be heard before the Honorable Carla E. Craig, Chief United States Bankruptcy Judge, in the United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, New York, **on April 28, 2016, at 1:00 p.m.** or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that responsive papers shall be filed with the Court and served on the United States Trustee, via Federal Express, no later than Monday, March 28, 2016. Responsive papers shall conform to the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure, identify the party submitting the response, and specify the rules, statutory provisions, and legal authority that support the response.

Dated: New York, New York
February 29, 2016.

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Alicia M. Leonhard
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STATEMENT OF UNDISPUTED MATERIAL FACTS¹

William K. Harrington, United States Trustee for Region 2 (the “United States Trustee”), hereby submits his statement of material facts as to which there is no genuine issues to be tried, pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56-1, as follows:

| Undisputed Material Facts | Evidence |
|--|---|
| 1. Defendant MVP Home Solutions LLC (“MVP”) is a New Jersey Corporation formed on July 1, 2008. | Tr.I 13:1-25; Ex. 2 |
| 2. Defendant Marcus M. Mullings (“Mr. Mullings”) is an officer and Acquisition Director of MVP and he oversees MVP’s day-to-day operations. | Tr.I. 13:8-25; 14:1-25; 15:1-9; 25:11-22 |
| 3. MVP conducts a foreclosure rescue business for distressed homeowners (“MVP Clients”) through a nationwide network of sales directors, managers and agents (collectively, the “Affiliates”). | Tr.I 28:3-25; 29:2-11; 38: 2-11 |
| 4. Silverstein & Wolf Corp. (“S&W”) is a New York Corporation, formed in February 2014, which is involved in real estate investment. | Ex. 3; Tr.III 13:9-11 |
| 5. Defendant Amal Balmacoon (“Mr. Balmacoon”) is the Chief Executive Officer and sole shareholder of S&W. | Tr.III 12:25; 13:1-11 |
| 6. Neither Mr. Mullings nor Mr. Balmacoon is a lawyer; and MVP and S&W are not law firms | Tr.I. 12:1-17; 23:3-11; Tr.III 12:12-25 |
| 7. Defendant John Nelson (“Mr. Nelson”) is a paralegal and independent contractor of S&W. | Tr.V 13:8-25; 14:2-3 |
| 8. In late 2013, Mr. Balmacoon met with Mr. Mullings several times and discuss the foreclosure rescue business and staying foreclosure sales. Mr. Balmacoon stayed foreclosure sales for several MVP clients in Chicago and elsewhere. | Tr.I 19:11-12; 20:5-8; 22:18-23; 23:2-25; Tr.II:15:12-25; 16:1-5; Tr.III 101:1-25 |
| 9. On December 10, 2013, MVP, through Mr. Mullings, and S&W, through Mr. Balmacoon, entered into a contract (the “Consultant Service Agreement”), for S&W to provide services related to MVP’s foreclosure rescue business. | Ex. 4; Tr.I 18:20-25; 36:1-14; Tr.II 15:6-8; Tr.IV 10:7-25 |
| 10. The Consultant Service Agreement was binding on both MVP and S&W. | Tr.I. 64:8-25; Tr.II 20:9-21; Tr.III 40:11-20 |
| 11. Under the Consultant Service Agreement, S&W agreed, among other things, to stay foreclosure sales for MVP’s Clients, by filing skeletal chapter 13 bankruptcy petitions. | Ex. 4; Tr.I 35:10-25; 36:1-14; 61:2-15; 62:2-25 |
| 12. MVP agreed to pay S&W \$1,850.00 (\$400.00 upfront and \$200.00 per month thereafter), for every MVP Client referred to S&W. | Tr.I. 103:9-25 Ex. 4 |

¹ The record contains citations to five depositions: (1) the Depositions of Marcus Mullings held on May 1, and June 16, 2015 (“Tr.I” and “Tr.II,” respectively); (2) the Depositions of Amal M. Balmacoon, held on January 23, and June 5, 2015 (“Tr.III” and “Tr.IV,” respectively); and (3) the Deposition of John Nelson, held on December 18, 2015 (“Tr.V”). Page and line numbers are cited as [page number]:[line numbers]. The transcripts and exhibits cited are attached to the Declaration of Janease Clarke-Oliver, filed with the Motion.

| Undisputed Material Facts | Evidence |
|---|--|
| 13. In or about December 2013, MVP began recruiting distressed homeowners for the “Stop the Sale Date Program”, a.k.a. “Stop the Sheriff Sale” (“Stop the Sale Date”) through its nationwide network of Affiliates. | Tr.II 65:17-25; 93:13-25 |
| 14. MVP uses the word “legal” in informational brochures disseminated to clients and potential clients and Stop the Sale Date contracts with clients | Tr.I 179:6-25; 180:2-7 Ex. 5; Ex. 8 |
| 15. Between January and April 2014, MVP recruited 29 distressed homeowners for STSS (collectively, the “Debtors”) and referred them to S&W to stay impending foreclosure sales. | Tr.I 35:10-25 |
| 16. All of the Debtors were MVP Clients. | Tr.I 35-10-25; 145:15-18; Tr.II 17:22-25; 18:2-9; 20:22-25; 28:20-25; 29:2-24; 30:2-3 |
| 17. As MVP Clients, the Debtors executed two agreements with MVP: (a) the MVP Home Solutions, LLC Service Agreement (the “MVP Service Agreement”) and (b) the Borrower Authorization (the “MVP Authorization”). | Ex. 5 and 6; Tr.I 146:14-25; 147:2-25’ 180:10-24; Tr.II 41:15-25; 42:1-6 |
| 18. Under the MVP Service Agreement, the Debtors contracted for STSS, at a cost of \$1,095.00 upon signing, and \$995.00 per month thereafter, for a minimum of 4 months, and MVP agreed to stay the Debtors’ foreclosure sales for as long as the Debtors remained current on monthly payments | Ex. 5; Tr.I 35:10-25; 36:11-14; Tr.II 41:15-25; 42:1-6 |
| 19. Under the MVP Authorization, the Debtors agreed that “[m]y designated agent in fact is MVP Home Solutions, LLC. I authorize said designee(s) to do whatever is reasonably and legally possible to avoid foreclosure . . . due to the hardship that I am experiencing.” | Ex 6 |
| 20. Between January and April 2014, MVP referred the Debtors, all of whom were facing imminent foreclosure sales of their residences to S&W under STSS. | Tr.I 62:11-15; 64:8-25; 76:2-25; 77:2-25; 80:6-11; 81:2-25 |
| 21. MVP made the referrals directly to Mr. Balmacoon and provided him with the MVP Authorization for each Debtor. | Tr.I 82:6-25; 83:9-25; 102:9-13; Tr.III 23:16-25; 24:8-19 |
| 22. Mr. Balmacoon forwarded the referral and documents to Mr. Nelson, as an independent contractor for S&W, to prepare and file the Petitions. | Tr.III 17:15-25; 18:1-15; 19:12-23; Tr.V 21:7-12 |
| 23. Mr. Nelson handwrote the skeletal Petitions and filed them with the Court, or delegated the preparation and filing to one of two friends, Ty and Sankore. | Tr.V 20:21-25; 24:11-25; 32:20-24; 33:20-21; 36:16-24; |
| 24. None of the Debtors resides within the venue of the Bankruptcy Court for the Eastern District of New York. | Ex. 1 |
| 25. The Petitions that Mr. Nelson prepared contained two addresses for the Debtors: (a) one of four addresses in Queens and one on Long Island and (b) a mailing address to the Debtors’ residence in another state. One Queens address was Mr. Balmacoon’s residence; Two others were Mr. Nelson’s current and former residences. The Long Island address was a house belonging to a company owned by Mr. Balmacoon’s parents. | Tr.III:11:20-23; 14:21-25; 15:1-2; 63:21-25; 64:1-7; Tr.V 9:10-11; 12:10-14 |
| 26. The Debtors did not sign the Petitions. | Tr.V 30:14-16 |
| 27. Mr. Nelson claims he did not execute the Petitions by signing the Debtors’ names but that he had Ty and Sankore sign the them. | Tr.V 29:17-21; 30:7-13 |

| Undisputed Material Facts | Evidence |
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| 28. Mr. Mullings, Mr. Balmacoon, and Mr. Nelson claim that they had authorization from the Debtors to prepare, execute and file the Petitions on the Debtors' behalf by virtue of the Borrower Authorization that the Debtors signed. | Tr.I. 87:2-25; 88:2-6, 13-25; 89:2-15; 90:2-25; 91:2-25; 92:2-25; Tr.II 19:3-25; Tr.III 23:16-23; 37:3-24; Tr.V 22:25; 23:2-6; 25:6-14; 28:7-17; 34:21-25; 35:2-15; 37:3-24; Ex. 6 |
| 29. The Petitions do not contain signatures, identification numbers or contact information for MVP, S&W, Mr. Balmacoon, Mr. Mullings, Mr. Nelson, or any other person involved with the authorization, preparation and filing of the Petitions. | Ex. 1 |
| 30. No one, including Mr. Mullings, Mr. Balmacoon, and Mr. Nelson contacted the Debtors prior to filing the Petitions. | Tr.I 141:9-25; 142:2-25; 143:25; 144:2-25; 145:2-25; Tr.II 20:17-21; Tr.III 29:14-25; Tr.IV 30:2-9; Tr.V 17:15-19 |
| 31. Mr. Nelson filed hard copies of the Petitions over the counter with the Clerk of the Bankruptcy Court or delegated the filing to Ty and Sankore | Tr.V 26:17-25; 32:20-24 |
| 32. Mr. Nelson paid a portion of the Bankruptcy Court filing fee when he filed the Petitions from funds Mr. Balmacoon gave him | Tr.III 21:12-25; Tr.V 25:23-25; 26:1-16 |
| 33. MVP paid Mr. Balmacoon and S&W to prepare and file the Petitions, after the Debtors paid MVP. | Tr.I 10:14-16; Tr.III 47-50; 53:5-19; 54:10-14; 55:7-25; 58:6-13 |
| 34. Mr. Balmacoon paid Mr. Nelson to prepare and file the Petitions and to pay the filing fees. | Tr.III 53:20-25; 54:2-9; Tr.V 25:23-25; 26:1-6, 23-25; 27: 2-14 |
| 35. MVP, S&W, Mr. Mullings, Mr. Balmacoon, and Mr. Nelson did nothing, other than file the Petitions, to assist the Debtors in resolving their foreclosures. | Tr.II 21:15-25; 22:2-4; Tr.V 37:14-21; Tr.III 23:10-15 |

Dated: New York, New York
February 29, 2016.

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

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